

Remarks

A. Status of the Claims

Claims 1-7, 9-16, 19, 23-25, and 27-29 were pending prior to the Office Action mailed February 25, 2010. No claims have been amended. Claims 1-7, 9-16, 19, 23-25, and 27-29 remain pending.

B. Allowed Claims

Applicant appreciates the Office's allowance of claims 1-7, 9-12, 23-25, and 27. These claims have not been amended, and thus remain patentable.

C. Statement of Substance of Interview

Applicant appreciates the courtesy of the telephonic interview on September 15, 2010 between Applicant's undersigned attorney and Examiner Hand. The current rejection of claims 13-16, 19, 28, and 29 over Gibertoni in view of Lockwood was discussed. Applicant's attorney pointed out that the stated purpose of Gibertoni is capillary drainage, and that Gibertoni's principle of operation for achieving its purpose is a capillary function. Applicant's attorney also pointed out that Figure 6 of Gibertoni illustrates that one end of Gibertoni's drainage element is inserted into a discharge tube 20 (e.g., to carry fluids away from a patient, such as to a receptacle), and that the proposed modification of Gibertoni would seem to require elimination of Gibertoni's discharge tube such that Gibertoni's drainage element could fit between a vacuum bandage and a wound surface.

Agreement was reached that the proposed modification of Gibertoni would render Gibertoni unsuitable for its stated purpose of capillary drainage, and would change Gibertoni's principle of operation from capillary drainage to vacuum drainage.

D. Claims 13-16, 19, 28, and 29 Are Patentable Over Gibertoni and Lockwood

Claims 13-16, 19, 28, and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gibertoni (EP 1,190,732) in view of Lockwood et al. (WO 02/43634 A2).

Applicants respectfully disagree and traverse.

Independent claim 13 recites:

A wound insert for use with a vacuum bandage including a wound dressing member coupled to a wound, a port of the wound dressing member, and a tube coupled to the port and to a vacuum source, the wound insert being positioned between the vacuum bandage and a wound surface of the wound, the wound insert comprising:

a body made of a generally non-porous, flexible material, wherein the body is cylindrical in shape, wherein a height of the cylindrical body is substantially greater than a diameter of the cylindrical body, and further wherein the body includes either (i) a solid top surface and a solid bottom surface, or (ii) a single passageway along a longitudinal axis of the body which extends between and through a top end and a bottom end of the body.

The Office asserted that Gibertoni discloses a wound insert having the structural features of the claimed wound insert, but gives the preamble of claim 13 patentable weight. Action at 3. The Office recognizes that Gibertoni fails to disclose these features, and attempts to supply the deficiencies with Lockwood. Action at 3-4.

The rejection is improper because the proposed modification would render Gibertoni's drainage element unsuitable for its stated purpose of capillary drainage. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

The rejection is also improper because the proposed modification would change Gibertoni's principle of operation. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959); *see also* MPEP 2143.01(VI).

Gibertoni discloses a drainage element . . . which comprises an elongated body provided with a plurality of internal channels provided with surface slits which produce drainage *by capillary action.*” Col. 2, ll. 30-34 (emphasis added). “At one of its ends, the collection body 10 is inserted in a discharge tube, designated by the reference numeral 20.” Col. 3, ll. 13-15; *see also* FIG. 6. Thus, Gibertoni’s principle of operation is explicitly drainage by capillary action.

In contrast, Lockwood discloses a bandage 10 for use with a *vacuum* source 12 to “provide[] *vacuum* therapy to the wound 16 to promote blood flow and remove exudate.” P. 11, ll. 6-13 (emphasis added). Thus, Lockwood’s principle of operation includes *vacuum* removal of exudate. Thus, the proposed modification would render Gibertoni’s drainage element *unsuitable* for *capillary* drainage [*see* claim 13: “the wound insert being positioned between the vacuum bandage and a wound surface of the wound”], by requiring Gibertoni’s *capillary*-drainage element to function with Lockwood’s *vacuum* removal device, and would *change* Gibertoni’s expressly stated principle of operation from capillary drainage to vacuum drainage.

Dependent claims 14-16, 19, 28, and 29 are also patentable at least by virtue of their dependency from claim 13. *In re Fine*, 837 F.2d 1071(Fed. Cir. 1988); *see also* M.P.E.P. § 2143.03(V).

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejections of claims 13-16, 19, 28, and 29.

Conclusion

Applicants believe that the foregoing remarks fully respond to all outstanding matters for this application. Should the Examiner desire to sustain any of the rejections discussed in relation to this Response, the courtesy of a telephonic interview between the Examiner, the Examiner's supervisor, and the undersigned attorney at 512-536-3083 is respectfully requested.

Respectfully submitted,



Eagle H. Robinson
Reg. No. 61,361
Attorney for Applicants

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 474-5201
(512) 536-4598 (facsimile)

Date: September 23, 2010